

CONTRACT FOR THE APPORTIONMENT OF SALES AND USE TAX REVENUE AND THE
PROVISION OF MUNICIPAL SERVICES WITHIN THE UNINCORPORATED AREA
COMMONLY KNOWN AS THE DONUT HOLE

This Contract for the apportionment of sales and use tax revenue generated by businesses located within the Donut Hole and for the provision of municipal services to the Donut Hole (the "Contract") is made by and between the County of San Bernardino, a political subdivision of the State of California (the "County") and the City of Redlands, a municipal corporation situated in the County of San Bernardino (the "City"), who are together sometimes referred to herein as the "Parties."

RECITALS

WHEREAS, the geographic area known as the Donut Hole (more fully described in Exhibit "A" entitled "Donut Hole Description") is located in the unincorporated area of the County but is completely surrounded on all sides by the City; and

WHEREAS, both the County and the City have an interest in developing, promoting and maximizing the beneficial use of the Donut Hole as an emerging regional business center; and

WHEREAS, businesses seeking locations in the Donut Hole should not become entangled in disputes between the County and the City over the receipt of sales and use tax revenue, the provision of municipal services and other jurisdictional issues; and

WHEREAS, the County and the City desire to apportion the sales and use tax revenue generated by businesses located in the Donut Hole generally on the basis of ninety percent (90%) of such sales and use tax revenue being provided to the City and ten percent (10%) of such sales and use tax revenue being provided to the County; with the apportionment formula changing under certain circumstances specified in this Contract to provide one hundred percent (100%) of the sales and use tax revenue generated by businesses in the Donut Hole to the City; and

WHEREAS, in 1998, the voters of California approved Proposition No. 11 which amended Article XIII, Section 29 of the California Constitution to allow cities and counties to enter into contracts to apportion sales and use tax revenue, by ordinance or resolution, and upon approval by a two-thirds vote of the legislative bodies of the parties to the contract; and

WHEREAS, the State Legislature amended Government Code sections 55700 et seq. to provide cities and counties the option to approve contracts apportioning sales and use tax revenue consistent with the provisions of Article XIII, Section 29 of the California Constitution; and

WHEREAS, it is the intent of the Parties to approve this Contract for apportionment of sales and use tax revenue and the provision of municipal services by resolution, and by a two-thirds vote of the City Council of the City and a two-thirds vote of the Board of Supervisors of the County in accordance with Government

Code section 55704.5; and

WHEREAS, the Parties have determined, by resolution, that (1) businesses have been established, and will be established, within the Donut Hole and that consumers residing in the County will be required to pay for tangible personal property from such businesses; (2) that equity requires that the sales and use tax revenue received by the County and the City from such businesses be apportioned between the County and the City for the benefit of their respective citizens; and (3) that the Chairman of the Board of Supervisors of the County and the Mayor of the City of Redlands be authorized to execute this Contract; and

EXHIBIT "A"

WHEREAS, the County and City desire to apportion the sales and use tax revenue generated from businesses in the Donut Hole in the manner specified in this Contract irrespective of present or future jurisdictional boundaries and subsequent reorganizations of property; and

WHEREAS, Government Code sections 54980 *et seq.* authorize the legislative body of any local agency to contract with any other local agency for the performance by the latter, for valuable consideration, of any municipal services or functions within the territory of the former; and

WHEREAS, the Local Agency Formation Commission of the County of San Bernardino ("LAFCO") has approved the City's provision of fire protection, water and wastewater services to the Donut Hole and the City is presently providing such services to the Donut Hole; and

WHEREAS, in addition to fire protection, water and wastewater services, upon approval by the LAFCO, the City is willing to provide the additional service of law enforcement to the Donut Hole in consideration of the County's agreement to apportion sales and use tax revenue; and

WHEREAS, in reliance upon the City's commitment to provide municipal services to the County in consideration of the County's apportionment of sales and use tax revenue, the County is refraining, and will continue to refrain, from pursuing viable opportunities to finance and construct infrastructure in the Donut Hole to provide water and wastewater services therein, and to fund and expand its law enforcement and fire protection operations to provide necessary services to the Donut Hole; and

WHEREAS, in reliance upon the County's commitment to apportion sales and use tax revenue in the manner specified herein, the City is making, and will continue to make, capital expenditures to obtain equipment and construct facilities necessary to provide municipal services on a timely basis to the Donut Hole; and

WHEREAS, it is the intent of the City, after approval of this Contract by the Redlands City Council and the County's Board of Supervisors to submit an Initiative Ordinance to the qualified voters of the City at the general municipal election scheduled for November 4, 2003, and request the qualified voters of the City to consent to the extension of the term of this Contract beyond December 31, 2003; and

WHEREAS, City has issued a permit for the connection to the City water and wastewater system of approximately 50 acres of land known as Phase I of the Citrus Plaza project, and all water and wastewater fees have been paid and water meters have been issued and installed in connection with such property; accordingly

Phase I of the Citrus Plaza project has a prior vested right to obtain water and wastewater service from the City which vested right will continue whether or not the term of this Contract is extended by the voters of the City in accordance with the provisions hereof; and

WHEREAS, it is the intent and understanding of the Parties that this Contract shall remain operative after December 31, 2003, only if the qualified voters of the City at the general municipal election scheduled for November 4, 2003, consent to the extension of the term of this Contract beyond December 31, 2003.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and for such other good and valuable consideration the receipt of which is hereby acknowledged by the Parties, the County of San Bernardino and the City of Redlands agree as follows:

AGREEMENT

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Contract, have the meanings specified herein.

- A. "Days" is defined as calendar days.
- B. "Donut Hole" is defined as that unincorporated area of the County of San Bernardino described in Exhibit "A" entitled "Donut Hole Description."
- C. "Fiscal Year" is defined as July 1 through June 30.
- D. "Municipal Services" is defined as fire protection services, law enforcement services (not including animal control services or code enforcement services), water and wastewater services, and any related inspection and other types of ancillary services (not including plan checking) customarily undertaken by the City departments which provide fire protection, law enforcement, water and wastewater services.
- E. "Sales Tax Revenue" is defined as the amount of sales and use tax disbursed by the State Board of Equalization to the County or the City under authority granted to the County or the City pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code sections 7200 et seq.).

Section 2. Apportionment of Sales Tax Revenue. From and after August 12, 2003, the County and the City shall apportion Sales Tax Revenue as follows:

- A. For each individual business generating Sales Tax Revenue in the Donut Hole on August 12, 2003, the City shall receive ninety percent (90%) of such Sales Tax Revenue and the County shall receive ten percent (10%) of such Sales Tax Revenue for a period of twenty (20) years commencing on August 12, 2003. At the end of such twenty (20) year period for each such business, on August 12, 2023, the apportionment formula shall change to provide that the City shall receive one hundred percent (100%) of the Sales Tax Revenue thereafter.

B. For each individual business not generating Sales Tax Revenue in the Donut Hole on August 12, 2003, and which begins generating Sales Tax Revenue after August 12, 2003, the City shall receive ninety percent (90%) of such Sales Tax Revenue and the County shall receive ten percent (10%) of such Sales Tax Revenue for a period of twenty (20) years commencing on the date of issuance of the certificate of occupancy for the business generating Sales Tax Revenue. At the end of such twenty (20) year period for each such business, the apportionment formula shall change to provide that the City shall receive one hundred percent (100%) of the Sales Tax Revenue thereafter.

C. Notwithstanding the provisions of Subsection B, above, and regardless of the number of years that have passed since the date of issuance of a certificate of occupancy for a business generating Sales Tax Revenue within the Donut Hole, commencing on August 12, 2028 (twenty-five years after the effective date of this Contract) for every business generating Sales Tax Revenue in the Donut Hole at that time, and every business generating Sales Tax Revenue thereafter, the City shall receive one hundred percent (100%) of such Sales Tax Revenue until the termination of this Contract pursuant to Section 10 hereof.

D. If the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code sections 7200 et seq.) is modified or repealed after July 1, 2003, or if the amounts of Sales Tax Revenue or the method of disbursement of Sales Tax Revenue is changed after July 1, 2003, such that another form of tax, revenue or other money (such as, but not limited to, real property taxes, income taxes, excise taxes or monies in the Education Revenue Augmentation Fund) is substituted in total or partial replacement of Sales Tax Revenue, such tax, revenue or other money shall be apportioned between the Parties consistent with the apportionment formula established in this Contract. Further, the County and the City shall fully cooperate with one another to amend this Contract as necessary or appropriate to facilitate the apportionment of such substituted tax, revenue or money in accordance with the apportionment formula established herein so that the intent of this Contract can be attained.

E. The differing percentage of Sales Tax Revenue received by the Parties under the various provisions of this Contract shall be based upon the date that such Sales Tax Revenue is generated and not on the date the State Board of Equalization disburses such Sales Tax Revenue to the Parties.

Section 3. Apportionment Payments. The County shall pay to the City the appropriate percentage (as specified in Section 2 above or Section 6 below) of Sales Tax Revenue received by the County from businesses in the Donut Hole within sixty (60) days of receipt of such revenue from the State Board of Equalization. If the City annexes some or all of the Donut Hole, the City shall pay to the County the appropriate percentage (as specific in Section 2 above or Section 6 below) of Sales Tax Revenue received by the City from businesses annexed within sixty (60) days of receipt of such revenue from the State Board of Equalization.

Section 4. Accounting. The County shall provide the City with a Statement of Account upon request of the City. The Statement of Account shall include the following: Sales Tax Revenue for the Donut Hole received by the County to date for the current Fiscal Year; Sales Tax Revenue for the Donut Hole received by the County during the preceding Fiscal Year; Sales Tax Revenue for the Donut Hole disbursed pursuant to this Contract by the County to the City during the preceding Fiscal Year; and the total of all Sales

Tax Revenue disbursed pursuant to this Contract by the County to the City from August 12, 2003. If the City annexes some or all of the Donut Hole, the City shall provide the same information to the County upon request.

Section 5. Administration Costs. The County's Auditor/Controller/Recorder may deduct from amounts paid to the City pursuant to Section 3 above the Auditor/Controller/Recorder's reasonable cost of administering the provisions of this Contract. If the City annexes some or all of the Donut Hole, the City's Finance Department may deduct from amounts paid to the County pursuant to Section 3 above the Finance Department's reasonable cost of administering the provisions of this Contract.

Section 6. Provision of Municipal Services.

A. In consideration of the County's agreement to apportion Sales Tax Revenue generated by businesses located within the Donut Hole with the City, commencing on August 12, 2003 and throughout the term of this Contract, except for law enforcement services, the City will provide the Municipal Services to all properties within the Donut Hole. The Municipal Services will be made available to the properties within the Donut Hole on a non-discriminatory basis, in accordance with the City's laws, and at the same level and scope as such Municipal Services would be provided by the City if the Donut Hole was located within the City's corporate limits: provided, however, City may charge established rates for providing water and sewer services outside the City ("outside surcharge") so long as (i) such rates are charged on a non-discriminatory basis for all areas outside the City, and (ii) such "outside surcharge" shall not be increased at a greater rate than inside City charges (for customers within the City) are increased.

B. With regard to law enforcement services, the City shall file and diligently pursue an application with LAFCO to provide law enforcement services pursuant to Government Code section 56133 as soon as practical after August 12, 2003. If LAFCO approves the City's application, the City shall thereafter provide law enforcement services to the Donut Hole consistent with the provisions of this Contract. Notwithstanding the ninety percent (90%) City and ten percent (10%) County apportionment and the one hundred percent (100%) City share of Sales Tax Revenue specified in Section 2, above, until the City is authorized by LAFCO to provide and actually does provide law enforcement services to the Donut Hole, the ninety percent (90%) City and ten percent (10%) County apportionment and the one hundred percent (100%) City share of Sales Tax Revenue shall instead be eighty percent (80%) to the City and twenty percent (20%) to the County.

C. The method, manner and rendition of the Municipal Services, the standards of performance, the control and discipline of personnel, and all other matters relating to the furnishing and performance of the Municipal Services by the City shall remain under the exclusive direction and control of the City, but shall be provided on a nondiscriminatory basis.

D. The City shall furnish and supply all labor, supervision, supplies, equipment, vehicles and facilities necessary to provide the Municipal Services with the understanding that:

(i) New development requesting water and/or wastewater services from the City shall be required to pay the City's water and/or wastewater capital improvement fees, including water source acquisition charges, and shall be responsible for the construction of local mains and extensions or the payment of frontage

charges for existing mains, pursuant to the same rates and procedures, respectively, established for new development inside the City.

E. The County shall not be liable for the payment of any salaries, wages or other compensation to any City employee performing the Municipal Services, whether full time or temporary, and no person employed by the City to provide the Municipal Services shall have any County pension, civil service or any similar status or right. The County shall not be liable for compensation or indemnity to any City employee for any injury or sickness arising out of his or her employment unless the injury results from the negligent or wrongful acts or omission of the County.

F. The Municipal Services described herein are intended to supplement, and not replace, any mutual aid agreements entered into by the City for the geographical area including the Donut Hole.

G. In the event of any dispute between the Parties as to the extent of the Municipal Services to be provided hereunder, the City Manager and the County Administrative Officer, or their designees, shall meet and confer in good faith in an effort to resolve the dispute. Each Party agrees to consider reasonable requests from the other Party for refinements and/or modifications to this Contract consistent with the general purposes and intent as expressed herein, provided that no amendment to this Agreement shall be binding on either Party unless both Parties agree in writing after appropriate action by the City's City Council and the County's Board of Supervisors.

H. After August 12, 2003, the County shall fully cooperate with the City and immediately commence the process of adopting or amending the appropriate County ordinances, resolutions, regulations and policies as the County, in its sole discretion, determines are reasonably necessary to authorize and facilitate the City's performance of the Municipal Services, including, but not limited to the City's provision of the ancillary services of inspection, enforcement, and the collection of fees for excessive false alarm responses associated with its provision of the Municipal Services.

I. Notwithstanding anything to the contrary express or implied elsewhere in this Contract, City agrees to diligently pursue termination of the Fire Protection Services Agreement, Contract No. 03-0279, with County Service Area 38 as soon as practical after August 12, 2003. In order to ensure that there are adequate fire protection services to the Donut Hole at all times, the agreement for termination of the Fire Protection Services Agreement, Contract No. 03-0279, with County Service Area 38, may provide for a suspension of the Fire Protection Services Agreement up through December 31, 2003 and for reinstatement of the Fire Protection Services Agreement if the City's voters do not approve the continuation of this Contract. The City further agrees that the agreement for termination of the Fire Protection Services Agreement, Contract No. 03-0279, with County Service Area 38, will require payment by County Service Area 38 of only those fees for fire protection services provided up to and including August 11, 2003.

Section 7. Real Property Taxes. Real property taxes shall be received by the City and the County in accordance with law.

Section 8. Notifications. All notices, statements, demands, requests, consents, approvals,

authorizations, terminations, appointments or designations hereunder by any Party shall be in writing and shall be sufficiently given and served upon the other Party personally, or if sent by United States certified mail, return receipt requested, postage prepaid and addressed as follows:

County:

County Administrative Officer
County of San Bernardino
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0120

City:

City Manager
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Either party may change its address by giving written notice thereof to the other in accordance with the provisions of this Section. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) days following the deposit of the same in the custody of the United States Postal Service.

Section 9. Authority to Execute. The persons executing this Contract warrant and represent that they have the authority to execute this Contract in behalf of their respective Parties and that such authority has been confirmed by resolution of the Parties in accordance with Government Code section 55704.5.

Section 10. Term.

A. This Contract shall commence on the date it has been approved by both the City and County, and terminate on December 31, 2003, unless the qualified voters of the City approve the Initiative Ordinance substantially in the form attached hereto as Exhibit "B" entitled "Initiative Ordinance" and consent to the extension of the term of this Contract beyond December 31, 2003.

B. If the qualified voters of the City approve the Initiative Ordinance substantially in the form attached hereto as Exhibit "B" entitled "Initiative Ordinance" and consent to the extension of this Contract beyond December 31, 2003, this Contract shall continue in full force and effect until the later of: (a) the date on which all of the property comprising the Donut Hole has become annexed to the City; or, (b) August 12, 2028, at which time this Contract shall terminate.

Section 11. Default. If either the City or the County fails to perform any of its obligations as provided in this Contract, and if the nonperforming party fails to cure its failure within thirty (30) days after notice of non-performance is given by the other Party, then the nonperforming party will be in default and the other party will have all of the remedies which are available to it at law or in equity, specifically including but not limited to the right to suspend any otherwise required payments of Sales Tax Revenue to the nonperforming party; provided, however, that if the failure to perform cannot reasonably be cured within such thirty (30) day

period, then the nonperforming party will not be in default of this Contract if it commences to cure its nonperformance within such 30 day period and thereafter diligently and in good faith prosecutes such cure to completion. Without limiting the effect of the foregoing, the Parties acknowledge and agree that the subject matter of this Contract is unique and that money damages may be inadequate to compensate the non-defaulting party and therefore, at the election of the non-defaulting party, this Contract may be specifically enforced.

Section 12. Waiver. Any waiver by one of the Parties of any breach of any one or more of the terms of this Contract shall not be construed to be a waiver of any subsequent or other term hereof. Failure on the part of either Party to require exact, full and complete compliance with any term of this Contract by the other Party shall not be construed as in any manner changing the terms of this Contract, nor stopping the enforcement thereof.

Section 13. Severability. If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract shall nevertheless continue in full force without being impaired or invalidated in any way to the extent that the intent of the Parties for entering into this Contract can be implemented.

Section 14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of California. This Contract was entered into and is intended to be performed in San Bernardino County, California. Venue for any action brought by either of the Parties shall be the Superior Court of California, County of San Bernardino, Central District. Each of the Parties hereby waives any rule of law or rule of court that would allow it to request or demand a change in venue. If any action concerning this Contract is brought by any third party, the Parties shall use their best efforts to obtain a change in venue to the Central District of San Bernardino County.

Section 15. Attorney Fees and Costs. If any legal action is instituted to enforce any of the Parties' rights hereunder, each of the Parties shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under Section 17, entitled "Indemnification."

Section 16. Jury Trial Waiver. The Parties hereby waive their respective rights to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either of the Parties against the other on any matter arising out of, or in any way connected with, this Contract, the relationship of the Parties or any claim or injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

Section 17. Indemnification.

A. The City agrees to indemnify and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from City's and its authorized officers', employees', agents' and volunteers' acts, errors, or omissions and for any costs or expenses incurred by County on account of any claim therefore, except where such indemnification is

prohibited by law.

B. The County agrees to indemnify and hold harmless the City and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from County's and its authorized officers', employees', agents' and volunteers' acts, errors, or omissions and for any costs or expenses incurred by City on account of any claim therefore, except where such indemnification is prohibited by law.

Section 18. Independent Capacity.

A. The City, its elected officials, officers, employees and agents are acting in an independent capacity during the term of this Contract and not as officers, employees or agents of the County, nor shall they have authority to contract for or in behalf of, or incur obligations in behalf of, the County.

B. The County, its elected officials, officers, employees and agents are acting in an independent capacity during the term of this Contract and not as officers, employees or agents of the City, nor shall they have authority to contract for or in behalf of, or incur obligations in behalf of, the City.

Section 19. No Joint Venture. The Parties to this Contract renounce the existence of any form of joint venture or partnership between them and agree that nothing contained in this Contract or in any document executed in connection with this Contract shall be construed as making the Parties joint venturers or partners.

Section 20. Exhibits. All exhibits mentioned in this Contract are attached hereto and incorporated herein by reference.

Section 21. Incorporation of Recitals. The Recitals are incorporated in this Contract.

Section 22. Sections and Captions. All references to "sections" refer to Sections of this Contract, unless otherwise stated. Captions are for convenience of reference only and do not constitute a portion of this Contract.

Section 23. Further Assurances. Each of the Parties shall, upon the request of the other Party, take such other actions, including but not limited to those actions described in subsection 6H hereof, and sign such other documents (in recordable form, if required) as may be reasonably required to effectuate the terms of this Contract.

Section 24. Consent. Whenever consent or approval of any of the Parties is required under this Contract or to implement its provisions, that Party shall not unreasonably withhold or delay such consent or approval.

Section 25. Entire Agreement/Amendment. This Contract contains the entire agreement and understanding between the Parties with respect to the subject matter hereof. There are no oral understandings, terms, conditions or promises, and neither of the Parties has relied upon any representation, express or implied, not contained in this Contract. This Contract may be amended, in writing, at any time by the mutual consent of

the Parties. No amendment shall have any force or effect unless prepared and executed in writing and approved by City's City Council and County's Board of Supervisors.

Section 26. No Presumption Regarding Drafter. The Parties acknowledge and agree that the terms and provisions of this Contract have been negotiated and discussed between the Parties and their attorneys, and this Contract reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Contract, and therefore no presumption for or against validity, or as to any interpretation hereof, based upon the identify of the drafter shall be applicable in interpreting or enforcing this Contract.

Section 27. Signatories. In accordance with the requirements of Government Code section 55705, each of the persons signing this Contract in behalf of its respective Party is authorized, by resolution, to do so.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the dates below.

COUNTY OF SAN BERNARDINO

CITY OF REDLANDS

By: _____
Dennis Hansberger, Chairman
Board of Supervisors

By: _____
Karl N. Haws, Mayor

Date: _____

Date: _____

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

ATTEST

J. RENEE BASTIAN
Clerk of the Board of Supervisors

Lorrie Poyzer, City Clerk

By: _____
Deputy

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM

APPROVED AS TO FORM

ALAN K. MARKS, County Counsel
San Bernardino County, California

DANIEL J. MCHUGH, City Attorney

By: _____
Rex A. Hinesley, Chief Deputy

By: _____
Daniel J. McHugh

Date: _____

Date: _____